

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

FEDERAL TRADE COMMISSION,
STATE OF ARIZONA,
STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA,
STATE OF ILLINOIS,
STATE OF MARYLAND,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF OREGON, and
STATE OF WYOMING,

Plaintiffs,

v.

THE KROGER COMPANY and
ALBERTSONS COMPANIES, INC.,

Defendants.

Case No.: 3:24-cv-00347-AN

**JOINT LIST OF STIPULATIONS AND
ISSUES FOR STATUS CONFERENCE**

Plaintiffs Federal Trade Commission (the “FTC” or “Commission”) and the States of Arizona, California, Illinois, Maryland, Nevada, New Mexico, Oregon, and Wyoming and the District of Columbia, by and through their respective Attorneys General (together, the “Plaintiff States”) and Defendants The Kroger Co. (“Kroger”) and Albertsons Companies, Inc. (“Albertsons”) respectfully submit the below list of stipulations and issues to be addressed by the Court during the August 7, 2024 status conference.

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I. STIPULATIONS

1. **Opening Statement:** The parties anticipate making opening statement of up to approximately 90-minutes per side, but in any event such time will come out of the speaking party's chess clock.

2. **Witness Sequestering:** Fact witnesses shall be sequestered and not attend the testimony of other fact witnesses during the hearing, and testimony of other fact witnesses shall not be disclosed to or accessed by them. Expert witnesses will not be sequestered and may attend or review fact witness testimony.

3. **Party Representative:** Defendants have until Friday, August 16, 2024, to identify one officer or employee per Defendant whom they propose to serve as that party's representative at counsel table for the duration of the hearing. Plaintiffs reserve all rights to object to either Defendant's designated representative.

4. **Witnesses Called by Both Parties.** If both parties intend to call a witness, that witness will testify only once and will be fully examined by both parties. Witnesses on both parties' witness list will testify during Plaintiffs' case-in-chief. They will first testify in response to Plaintiffs' questions and then in response to Defendants' questions.

5. **Deposition Designations:** While Defendants currently intend to call each of their witnesses live, Defendants recognize that some third parties may be unwilling or unable to appear live at the evidentiary hearing and reserve the right to call those witnesses through designation of depositions taken in this case (including exhibits used during the deposition) with the understanding that Plaintiffs may counter designate from the same deposition and accompanying exhibits. Defendants will make best efforts to notify Plaintiffs by the start of the hearing whether they intend to present any deposition designations in lieu of live testimony.

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Plaintiffs reserve all rights to object to Defendants' designations of deposition in whole or in part.

6. **Presentation by Video:** To alleviate demonstrated burden, third-party witnesses may testify by video-conference with approval of the Court.

II. OUTSTANDING ISSUES

1. **Sealing of evidentiary hearing exhibits and the courtroom during the hearing:** The parties are continuing to meet and confer regarding a proposal and have agreed to either submit a joint proposal or separate position statements for this Court's consideration by August 9, 2024 at 5:00 pm EST.

2. **Closing Argument:** The parties will seek the Court's guidance on closing arguments, if any. If the Court requests closing arguments, the parties will be prepared to present them at the conclusion of the hearing beginning on August 26, 2024, or after the submission of post-trial briefs, as the Court prefers.

3. **Post-hearing findings of fact and conclusions of law:** The Parties are at impasse regarding the scope of the hearing record. It is Plaintiffs' position that the Court should be able to consider the full record submitted in the administrative proceeding. It is Defendants' position that the record before the court should be limited to what is presented to the court during the evidentiary hearing.

Dated: August 6, 2024

Respectfully submitted,

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